NOTICE: This opinion is subject to formal revision before publication in the Board volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

SPCA in Cattaraugus County, Inc. *and* Linda Vane. Case 03–CA–090311

February 22, 2013 DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN AND BLOCK

The Acting General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by Linda Vane on October 1, 2012, the Acting General Counsel issued a complaint and notice of hearing on November 30, 2012, against SPCA in Cattaraugus County, Inc. (the Respondent), alleging that it has violated Section 8(a)(1) of the National Labor Relations Act. The Respondent failed to file an answer.

On December 31, 2012, the Acting General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on January 2, 2013, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by December 14, 2012, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the Acting General Counsel's motion disclose that the Region, by letter and email dated December 18, 2012, notified the Respondent that unless an answer were received by the extended due date of December 26, 2012, a motion for default judgment would be filed. In addition, on December 18, 2012, the Acting General Counsel emailed the Respondent an additional copy of the complaint. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer, we grant the Acting General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a not-for-profit corporation with an office and place of business at 2944 Route 16, Olean, New York (the Respondent's facility), has operated an animal shelter and provided animal control to municipalities. In conducting its operations during the calendar year ending December 31, 2011, the Respondent derived gross revenues in excess of \$250,000 and provided services valued in excess of \$5000 for the City of Olean, New York, and the Town of Olean, New York, enterprises directly engaged in interstate commerce.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Kelly Chaffee has been a member of the Respondent's board of directors, and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act, and an agent of the Respondent within the meaning of Section 2(13) of the Act.

At all material times, the following individuals held the positions set forth opposite their respective names, and have been agents of the Respondent within the meaning of Section 2(13) of the Act:

Kristen McDonald Chair, Board of Directors
Regina DeFeo Vice Chair, Board of Directors
Tina Wedge Member, Board of Directors
(From May to about August 2012)

Since about April 7, 2012, the Respondent has maintained a confidentiality policy that provides in part that:

It is crucial to the Organization that Employees and Board Members do not publicly criticize, condemn or degrade other SPCA Board Members, other SPCA Employees, or SPCA policies.

About June 9, 2012, the Respondent's employee, Linda Vane, concertedly complained to the Respondent regarding the wages, hours, and working conditions of the Respondent's employees by demanding that employees receive their paychecks.

About June 9, 10, and 15, 2012, by electronic mail, Vane concertedly complained to the Respondent regarding the wages, hours, and working conditions of the Respondent's employees by demanding that employees receive their paychecks.

About June 15, 2012, the Respondent removed Vane from the position of medical attendant.

About June 17, 2012, the Respondent, by letter, threatened Vane with discharge if she engaged in protected concerted activities.

About June 25, 2012, the Respondent discharged Vane.

The Respondent engaged in the conduct described above because Vane engaged in the conduct described, and to discourage employees from engaging in these or other concerted activities.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act in violation of Section 8(a)(1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) of the Act by maintaining an overly broad confidentiality policy prohibiting employees from publicly criticizing, condemning, or degrading SPCA Board Members, employees, or company policies, we shall order the Respondent to rescind the rule and notify its employees in writing that the rule is no longer in force. Further, having found that the Respondent violated Section 8(a)(1) of the Act by removing Linda Vane from the position of medical attendant and discharging her because she engaged in protected concerted activities and to discourage employees from engaging in these or other concerted activities, we shall order the Respondent to offer Vane full reinstatement to her former job as a medical attendant or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed and to make Vane whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful actions against her. Backpay shall be computed in accordance with F. W. Woolworth Co., 90 NLRB 289 (1950), with interest as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987), compounded daily as prescribed in Kentucky River Medical Center, 356 NLRB No. 8 (2010).

Additionally, in accordance with our recent decision in Latino Express, Inc., 359 NLRB No. 44 (2012), we shall

order the Respondent to compensate Vane for the adverse tax consequences, if any, of receiving a lump-sum backpay award and to file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters for Vane.

Finally, the Respondent shall also be required to remove from its files any reference to the unlawful removal of Vane from the position of medical attendant and her unlawful discharge and to notify Vane in writing that this has been done and that the unlawful removal and discharge will not be used against her in any way.

ORDER

The National Labor Relations Board orders that the Respondent, SPCA in Cattaraugus County, Inc., Olean, New York, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Maintaining an overly broad confidentiality policy that prohibits employees from publicly criticizing, condemning, or degrading SPCA Board Members, employees, or policies.
- (b) Removing employees from their positions because they engage in protected concerted activities, and to discourage employees from engaging in these or other concerted activities.
- (c) Threatening employees with discharge because they engage in protected concerted activities, and to discourage employees from engaging in these or other concerted activities.
- (d) Discharging or otherwise discriminating against employees because they engage in protected concerted activities, and to discourage employees from engaging in these or other concerted activities.
- (e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Rescind the confidentiality policy prohibiting employees from publicly criticizing, condemning or degrading SPCA Board Members, employees or policies, and notify employees in writing that this has been done and the rule is no longer in force.
- (b) Within 14 days from the date of this Order, offer Linda Vane full reinstatement to her former job as a medical attendant or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.
- (c) Make Linda Vane whole for any loss of earnings and other benefits suffered as a result of the discrimina-

tion against her, in the manner set forth in the remedy section of this decision.

- (d) Compensate Linda Vane for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.
- (e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful removal of Linda Vane from the position of medical attendant and her unlawful discharge and, within 3 days thereafter, notify her in writing that this has been done and that the unlawful discrimination will not be used against her in any way.
- (f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (g) Within 14 days after service by the Region, post at its facility in Olean, New York, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Acting Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 15, 2012.
- (h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a re-

sponsible official, on a form provided by the Region, attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 22, 2013

Mark Gaston Pearce,	Chairman
Richard F. Griffin, Jr.,	Member
Sharon Block.	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain an overbroad confidentiality policy that prohibits you from publicly criticizing, condemning, or degrading SPCA Board Members, employees, or policies.

WE WILL NOT remove you from your position because you engage in protected concerted activities, or to discourage employees from engaging in these or other concerted activities.

WE WILL NOT threaten you with discharge because you engage in protected concerted activities, or to discourage employees from engaging in these or other concerted activities.

WE WILL NOT discharge or otherwise discriminate against you because you engage in protected concerted

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted By Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

activities, or to discourage employees from engaging in these or other concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind our overbroad confidentiality policy that prohibits you from publicly criticizing, condemning, or degrading SPCA Board Members, employees, or policies.

WE WILL, within 14 days from the date of the Board's Order, offer Linda Vane full reinstatement to her former job as a medical attendant or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Linda Vane whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, with interest.

WE WILL compensate Linda Vane for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters for her.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful removal of Linda Vane from the position of medical attendant and her unlawful discharge, and WE WILL, within 3 days thereafter, notify Linda Vane in writing that this has been done and that the unlawful discrimination will not be used against her in any way.

SPCA in Cattaraugus County, Inc.